

Serial No. 09/935,737

Docket No.: K-1998



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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Takuji Sugiyama et al.

Serial No. 09/935,737

Filed: August 24, 2001

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: Group Art Unit: 1761

: Examiner: Drew E. Becker
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For: PACKAGING BODY FOR HEATING PROCESSING

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT'S BRIEF (37 C.F.R. § 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on July 15, 2004.

The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is SUN A. KAKEN CO., LTD. of 2-23-1 Kanda Awaji-cho, Chiyoda-ku, Tokyo, JAPAN.

II. RELATED APPEALS AND INTERFERENCES

The Appellant knows of no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 5-9 and 11 remain pending. Claims 1-4 and 10 have been canceled. All currently pending claims have been finally rejected. In particular, claims 5-9 and 11 are rejected under 35 USC § 103 (a) as being unpatentable over Brauner et al. (US Patent No. 5,171,950) in view of Toshima et al. (US Patent No. 5,928,553). The Appellant appeals the final rejection of claims 5-9 and 11.

IV. STATUS OF AMENDMENTS

The Appellant filed an Amendment After Final Action on June 14, 2004. In that filing, the Appellant canceled claims 1-4 and 10, and amended claim 5 to place the application in a better condition for appeal. The Examiner entered the Amendment After Final as noted in the Advisory Action mailed June 28, 2004.

V. SUMMARY OF INVENTION

The disclosed embodiments relate to a packaging body fillable with contents, such as food, for heat processing. The packaging body includes a number of sealed sections formed from a sheet

of plastic: an easy-opening vapor communication joining section that allows the internal pressure within the heated bag to be released; and tightly-sealed top and bottom side joining sections. The vapor communication joining section has a lower peel strength at a predetermined high temperature than the top and bottom side joining sections to allow for the release of internal pressure within the packaging body while maintaining the integrity of the structure of the packaging body. In particular, the vapor communication joining section has a peeling off property ranging from 0 to 1200 gf/15 mm at 90° C and greater than or equal to 3 kgf/15 mm at 23° C so that only the vapor communication joining section is openable when the packaging body is heated to 90° C.¹

In one described embodiment, for example, the packaging body is formed from a rectangular sheet of plastic having its left and right end sides brought into contact and joined together by a sealant layer to form the vapor communication joining section.² Further, the top and bottom sides are similarly brought together and sealed to form the top and bottom side joining sections.³ The contents may be filled into the packaging body during fabrication, such as by using a vertically-oriented package fabrication and filling system.⁴ In the example of the vertically-oriented package fabrication and filling system, a longitudinal heat sealer seals the vapor communication joining section while a transverse heat sealer seals the top and bottom side joining sections.⁵ These heat sealers may apply different heat seal temperatures to provide the vapor communication joining section with a lower peel strength at a given temperature than the top and bottom side joining sections.⁶ Thus, the package of the described embodiment includes a vapor communication joining section having a peeling off property ranging from 0 to 1200 gf/15 mm at 90° C and greater than or equal to 3 kgf/15 mm at 23° C so that only the vapor communication joining section is openable when the packaging body is heated to 90° C.⁷

¹ Abstract; and Specification, paragraphs 21 and 24.

² Specification at paragraphs 13 and 16, and Fig. 1(a).

³ *Id.* and Fig. 1(b).

⁴ Specification at paragraphs 14 and 15, and Fig. 3.

⁵ *Id.*

⁶ *Id.* at paragraph 24.

VI. ISSUE

The only issue presented for consideration in this appeal is whether the Examiner erred in rejecting claims 5-9 and 11 under 35 U.S.C. 103(a) as being unpatentable over Brauner et al. (US Patent No. 5,171,950) in view of Toshima et al. (US Patent No. 5,928,553).

VII. GROUPING OF CLAIMS

The Appellant respectfully asserts that the claims are separately patentable, and thus, the claims do not stand or fall together.

VIII. ARGUMENT

The Examiner erred in rejecting claims 5-9 and 11 under 35 USC § 103(a) as being unpatentable over Brauner et al. in view of Toshima et al.

The Examiner contends that Brauner et al. teaches all the claimed structures except for a peeling force of at least 3 kg/15 mm at 23° C (claim 5), a peeling force of 0-1200 g/15 mm at 90° C (claim 5), polypropylene (claim 7), and the sealant layer being a tape (claim 11).⁸ The Examiner asserts that the claimed structures missing from Brauner et al. are allegedly found in Toshima et al.⁹ The motivation supplied by the Examiner to combine these references is that it would have been obvious to use the 0-1200 g/15 mm at 90° C peeling force and polypropylene tape disclosed by Toshima et al. in the invention of Brauner et al. since both are directed to microwave bags with vents, and that the normal peeling force of at least 3 kg/15 mm at 23° C is inherently provided by the polypropylene sealant tape of Toshima et al.¹⁰ Appellant respectfully traverses this rejection.

⁷ *Id.* at paragraph 21.

⁸ Office Action mailed March 16, 2004, p. 3, lines 2-4.

⁹ *Id.* at p. 3, lines 4-6.

¹⁰ *Id.* at p. 3, lines 7-19

The cited references do not disclose or suggest a packaging body including a plastic base material having side joining sections and end sides connected with a sealant layer to form a vapor communication layer, where the sealant layer has a peeling off property from 0 to 1200 g/15 mm at 90° C and at least 3 kg/15 mm at 23° C such that only the vapor communication joining section is opened at 90° C to release pressure inside the packaging body, as recited by claim 5. Brauner et al. discloses a self-opening pouch formed of a plastic film laminated to a paper substrate.¹¹ The object of the self-opening pouch of Brauner et al., which is intended for the microwave popping of popcorn kernels, is “to release the food product into an encompassing enclosure” in a manner such that “the user avoids having to open manually the relatively hot pouch, the consumer only having to open the relatively cool outer bag in order to gain access to the popped contents.”¹² As such, Brauner et al. discloses a self-opening pouch where all of the sealed portions, namely longitudinal seal 32a and top and bottom end seals 34a and 36a, open at about the same time to completely expose the contents of the pouch.¹³ Further, Brauner et al. does not disclose the peel strength of any of its joined sections, and does not disclose or suggest a joined section having a peel strength that varies with temperature. Thus, Brauner et al. does not disclose or suggest only a vapor communication joining structure opening to release pressure inside the packaging body, or a vapor communication joining structure having different peeling off properties at different temperatures, as recited by claim 5.

The addition of Toshima et al. does not make up for the deficiencies of Brauner et al. Toshima et al. discloses a sealed bag for microwave heating having a longitudinally fused area extending between laterally fused areas at both end portions.¹⁴ The longitudinal fused area is formed by bringing together both longitudinal side edges of a film and connecting them together using an “easily openable tape having a peel strength of 100 g/15 mm to 1500 g/15 mm.”¹⁵ Contrary to the Examiner’s assertion of the inherent disclosure of a “normal peel strength,” Toshima et al. does not disclose that the peel strength of the easily openable tape varies with temperature, and does not suggest any reason for

¹¹ US Patent No. 5,171,950 to Brauner et al., Abstract.

¹² *Id.* at col. 2, lines 1-11.

¹³ *Id.* at col. 8, lines 25-30; and Fig. 11.

¹⁴ US Patent No. 5,928,553 to Toshima et al., col. 3, lines 36-38.

¹⁵ *Id.* at col. 3, lines 24-27.

having any variability in the peel strength at various temperatures. Thus, Toshima et al. does not disclose or suggest the sealant layer with a peeling off property of 0-1200 g/15 mm at 90° C and a peeling off property of at least 3 kg/15 mm at 23° C, as recited by claim 5.

Additionally, there is no motivation to combine Brauner et al. and Toshima et al. since the object of Brauner et al. is to have the entire bag, including all of the sealed sections, to open completely. As such, Brauner et al. teaches against any combination with a reference that discloses sealed sections with different peel strengths, or a vapor communication joining section having different peeling off properties at different temperatures.¹⁶ Even if the lack of motivation were overlooked, Toshima et al. does not disclose or suggest substantially different peeling off properties of a vapor communication joining section at different temperatures. Thus, there is no motivation to combine the cited references, and, even if combined, the cited references do not disclose or suggest the recited features of claim 5.

With regard to claim 6, the Appellants submit that no combination of the cited references disclose or suggest all of the features of claim 6, including the limitations of the base claim, and that the Examiner has failed to properly combine the cited references relating to the additional features of claim 6. Brauner et al. and Toshima et al. fail as 35 USC § 103(a) references for the reasons discussed above. Further, Toshima et al. teaches away from the recited side joining sections being firmly connected together when the packaging body is heated more than 90° C by disclosing that “[w]hen the pick-up flap 10 is grasped by the fingers and pulled, one side of the bag can be opened all at once and the contents can be easily discharged from the bag.”¹⁷ This claim does not stand or fall with any other claim at least for these reasons.

With regard to claim 7, Appellant submits that no combination of the cited references disclose or suggest at least the packaging body of claim 6, with the sealant layer formed of a non-stretching polypropylene film, as claimed. This claim does not stand or fall with any other claim for at least this reason.

With regard to claim 8, Appellant submits that no combination of the cited references disclose or suggest at least the packaging body of claim 7, with the bag having an elongated rectangular shape

¹⁶ *Id.* at col. 2, lines 8-11.

¹⁷ *Id.* at col. 3, line 67 to col. 4, line 3.

and the vapor communication joining section being formed to a longitudinal direction of the bag, as claimed. This claim does not stand or fall with any other claim for at least this reason.

With regard to claim 9, Appellant submits that no combination of the cited references disclose or suggest at least the packaging body of claim 8, with the sealant layer deposited integrally on an entire surface of the plastic base material, as claimed. This claim does not stand or fall with any other claim for at least this reason.

With regard to claim 11, Appellant submits that no combination of the cited references disclose or suggest at least the packaging body of claim 6, with the sealant layer interposed between the side joining sections of the plastic base material to join the side joining sections, as claimed. This claim does not stand or fall with any other claim for at least this reason.

IX. CONCLUSION

For the extensive reasons discussed above, Appellant respectfully submits that the rejection of claims 5-9 and 11 under 35 USC § 103(a) is improper and should not be sustained. Therefore, Appellant respectfully requests a reversal of the Final Rejection by the Examiner.

If for any reason this Appeal Brief is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned, Applicant's attorney of record.

Respectfully submitted,
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IX. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

5. A packaging body for heat processing a material retained therein, comprising:

a plastic base material having side joining sections, and end sides, said side joining sections and end sides being superposed and connected together to form a bag for filling the material therein, and

a sealant layer interposed between the end sides to connect the end sides together therethrough to thereby form a vapor communication joining section at the end sides, said sealant layer providing a peeling off property from 0 to 1,200 gf/15 mm at 90°C and a peeling off property of equal to or more than 3 kgf/15 mm at 23°C so that only when the packaging body is heated more than 90°C, the vapor communication joining section is only opened to release pressure inside the packaging body.

6. A packaging body according to claim 5, wherein said side joining sections are firmly connected together when the packaging body is heated more than 90°C.

7. A packaging body according to claim 6, wherein said sealant layer is formed of a non-stretching polypropylene film.

8. A packaging body according to claim 7, wherein said bag has an elongated rectangular shape, said vapor communication joining section being formed parallel to a longitudinal direction of the bag.

9. A packaging body according to claim 8, wherein said sealant layer is deposited integrally on an entire surface of the plastic base material.

11. A packaging body according to claim 7, wherein said sealant layer is a tape interposed between the side joining sections of the plastic base material to join the side joining sections.